

City Council

Rich Tran, Mayor
Marsha Grilli, Vice Mayor
Garry Barbadillo, Councilmember
Bob Nuñez, Councilmember
Anthony Phan, Councilmember



Members of Subcommittee

Anthony Phan, Councilmember
Bob Nuñez, Councilmember

***City Council Subcommittee on Cannabis
Monday, September 10, 2018
City Hall Committee Conference Room
455 E. Calaveras Blvd.
7:00 p.m.***

- I. Call to Order**
- II. Flag Salute**
- III. Roll Call**
- IV. Approval of Agenda: September 7, 2018**
- V. Approval of Minutes: June 18, 2018**
- VI. Public Forum**

Members of the audience are invited to address the Commission on any subject not on the agenda. Speakers must state their name and address for the record, and limit their remarks to under three minutes. As an unagendized item, no response is required of City staff or the Commission; however, the Commission may agendize the item for a future meeting.

VII. New Business

1. Receive Staff Report on Potential Cannabis Establishments, Cost Recovery Fees and Community Benefit Agreement Options

Background: At the August 7, 2018 City Council meeting, Council directed staff to bring forward a discussion about potential cannabis establishments as well as any cost recovery fees and community benefit agreement options to the Cannabis Subcommittee.

Recommendation: 1) Receive staff report, and 2) Provide direction to staff on recommendations for the full Council's consideration at the October 2, 2018 City Council meeting.

VIII. Adjournment

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.
Commissions, boards, councils and other agencies of the City exist to conduct the people's business.
This ordinance assures that deliberations are conducted before the people and the
City operations are open to the people's review.

Materials related to an item on this agenda submitted to the Commission Subcommittee after initial
distribution of the agenda packet are available for public inspection at
Milpitas Community Center, 457 E. Calaveras Blvd., Milpitas during normal business hours.

For more information on your rights under the Open Government Ordinance or to report a violation of
the ordinance, contact the City Attorney's office at Milpitas City Hall,
455 E. Calaveras Blvd, Milpitas, CA 95035 Phone : 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I
Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by
selecting from Online Services the link to Milpitas Municipal Code link.*

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RECOMMENDATION:

- 1) Receive staff report, and 2) Provide direction to staff on recommendations for the full Council's consideration at the October 2, 2018 City Council meeting.

BACKGROUND:

The City Council Subcommittee on Cannabis (Subcommittee) was formed and began meeting in February 2017 to review and recommend potential options for cannabis zoning, ordinances, and tax measures for City Council consideration. The Subcommittee has reviewed current State laws and buffer zones, received presentations including information on other local jurisdictions that have implemented ordinances, measures, or moratoriums, and has developed comprehensive timelines for the potential implementation of a tax measure, and any zoning and regulatory ordinances.

At the April 24, 2018 Subcommittee meeting, the Subcommittee supported a staff outreach plan of hosting cannabis community meetings and in person and online surveying, to garner feedback from residents on cannabis taxation and regulation in Milpitas. Staff, with the assistance of consultant Management Partners, hosted two community meetings, conducted in person surveys at two (2) City special events, and an Open Town Hall online Survey.

On May 1, 2018, staff presented the results of the outreach to the Subcommittee, Online and special event "in-person" survey participation garnered 569 responses on varying cannabis related questions and topics (Attachment A).

In summary:

- Majority opposed outdoor cultivation (56%)
- 49% supported allowing cannabis retail businesses, and 48% did not support allowing cannabis retail in Milpitas
- Results were neutral or undecided on cultivation and manufacturing businesses (50%)
- Majority supported a cannabis sales tax in Milpitas (79%)

Community meetings were held in June 2018, led by consultants, Management Partners. Those meetings garnered a variety of verbal feedback from residents on cannabis topics of Personal Cultivation, Cannabis Businesses, and Taxation and Revenue. Responses were captured in a prepared meeting summary, by Management Partners. (Attachment B)

At the August 7, 2018 City Council meeting, staff brought forward a potential cannabis tax measure and a draft ordinance to permanently ban cannabis. The draft ordinance was intended to replace the temporary moratorium that is currently in place. Council did not approve moving forward with the cannabis tax measure but instead asked staff to bring forward options to allow cannabis establishments as well as alternate revenue options through community benefit agreements. Staff will need to bring forward an ordinance to the Planning Commission on October 24, 2018, either banning cannabis or allowing certain uses, so as to have an ordinance in place when the moratorium ends on January 17, 2019.

ANALYSIS:

Staff has been working with the consultant firm Hinderliter, de Llamas and Associates) (HdL Companies) on drafting a cannabis regulatory ordinance, cannabis use tax revenue estimates, and cannabis use tax ballot language as well as providing several cannabis tax fee alternatives since June 20, 2018. HdL Companies has worked with over 125 local jurisdictions to develop regulatory ordinances, cannabis tax measures, fiscal analysis, application development, and community benefit agreements. While its work for the City related to a cannabis use tax is no longer relevant at this time, HdL Companies will continue to work with the City regarding a cannabis regulatory ordinance and may provide on-going fiscal analysis, application process support, training, and other related work should the City Council decide to allow cannabis establishments. For the City to move forward with allowing cannabis establishments, there are several factors that need to be considered.

Buffer Zones

- **Sensitive Uses:** Business and Professions Code Section 26054(b) requires that buffer zones be established around what the State defines as sensitive uses (schools, licensed commercial day care centers, and youth centers). The State establishes the default buffer zone distance of 600 feet, however, local governments have the discretion to establish a different distance, including a smaller buffer zone, and the State will honor it so long as it is codified.
 - **Schools:** With respect to schools, the State is inflexible on the method by which the distance of the buffer zone is calculated, for it is specified in statute (Health and Safety Code Section 11362.768(c) which states “The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.”) This rule pre-dates state licensing of commercial cannabis businesses, so the statute does not expressly mention them – nonetheless this rule on calculating the distance is being applied to all commercial cannabis businesses.
 - **Youth Centers:** Currently the state does not very clearly define youth centers, so for purposes of establishing appropriate buffer zones around this particular sensitive use, multiple cities have had difficulty over the past year in determining what constitutes a

youth center. In the interim, until such time as the State steps in and provides greater clarity in this area, it has fallen to cities to craft their own more detailed definition. Based on their experience working with other jurisdictions, HdL Companies has developed the following definition which staff recommends using: “Youth Center” means any public or private facility that is primarily used to host recreation or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or on city, county or state parks. This definition shall not include any private martial arts, yoga, ballet, music, art or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor’s office primarily serving children or a location which is primarily utilized as an administrative office or facility serving youth organizations.

- **Buffer Zones for State Mandated Sensitive Uses:** Staff has evaluated buffer zones for sensitive uses at the state mandated level as well as at distances that are lower and higher than the state mandated buffer zone. Staff will be presenting maps showing 400, 500, 600, 800 and 1,000 foot buffer zones and will discuss the differences between them.
- **Additional Discretionary Buffer zones:** Buffer zones for residential uses and home based day care centers are not addressed under State law. Many jurisdictions employ a buffer zone for residential uses, and it is fully within the scope of the land use and enforcement powers of individual cities to establish a unique residential buffer zone most appropriate for their respective communities. Based on the size of the City of Milpitas, staff has evaluated a residential buffer zone of 150 feet. Staff has also evaluated a 600 feet buffer zone for home based daycare facilities and will be presenting maps for both options at the Subcommittee meeting.

Types and Number of Cannabis Establishments

If the City were to allow cannabis establishments, staff recommends the following types and number of establishments:

- Cultivation (2)
- Distribution Center (2)
- Manufacturing (2)
- Microbusiness (2) (City could allow Microbusinesses to conduct non-storefront deliveries only due to how they are zoned or limit it to only cultivation, manufacturing and distribution with no retail)
- Retail – storefront and non-storefront (3, possibly 4 if no Microbusiness is allowed)
- Testing Lab (2)

Please note Research and Development is not a permit type but is permitted as a function of a cultivation nursery under regulation state regulations. Additional detail on this section is provided in Attachment C. In addition to looking at potential locations based on buffer zones and market conditions, safety

considerations will also be an important decision factor in determining the types and number of cannabis establishments. Thus, a more in-depth analysis will be required if staff is directed to move forward with drafting an ordinance allowing cannabis establishments in the City.

Cost Recovery Fees Methodology and Application Process

In order for the City to recover the cost associated with developing a Cannabis Management Program it will be essential for staff to ensure that they recover the costs associated with all the fees outlined in this report. In addition, if the City determines to limit the number of permits authorized in the City it is highly recommended that the City create a merit-based application process for the issuance of the regulatory permit.

If the City decides to move forward with allowing cannabis establishments, the consultant will assist staff in developing a cost recovery model to ensure all staff and consultant costs associated with the application process and ongoing oversight are captured. The consultant will also help develop a merit based application process that will foster transparency in the process and allow staff to systematically rank applications based on well-defined criteria.

In addition to screening through the application process, staff also recommends requiring a Conditional Use Permit (CUP) like is does for other similar businesses in the commercial districts.

Thus, for a business to be able to operate in the City, the following fees will need to be established

- Zoning Evaluation fee
- Initial Application fee
- CUP Fee
- Annual cost recovery fee

Community Benefit Agreements with Operators

The Cannabis Industry is complex, and the state regulations have been a constant change in the past few years. As such, cities throughout California have developed a variety of agreements in order to have flexibility in how they approach establishing cannabis businesses in their local communities. In some cases, these agreements were designed to be temporary until the program can be evaluated and a cannabis tax can be established in a future election. For others, these agreements focused on public safety, welfare, and provide conditions acceptable to the local agency to provide certainty to the local jurisdiction especially in a fee in order to ensure the cost and impact are offset by the new revenues. Some of these cities include Ceres, Colusa, Dixon, El Monte, Firebaugh, Hollister, La Habra, Lynwood, Maywood, Sacramento, San Fernando, Thousand Oaks and West Sacramento. Some of these agreements include the following:

- Community Benefit Use Agreement
- Neighborhood Impact Agreement
- Operational Agreement

Community Benefit Use Agreement

Community benefits are contributions by commercial cannabis businesses that would benefit the local community and can take many forms. Community benefits outlined in this type of agreement generally fall into five broad categories:

- School and Education (could include books, materials, technology, scholarships, sports and after school programs, adult education, job training programs)
- Parks and Open Space (could include playground equipment, lighting, new parks and open space areas, park improvements, bike lanes and trails, senior center and aquatics center)
- Community Services or Programs (could include health and wellness programs, community events, youth centers, food and toy drives, local museums, sports programs, homeless services and prevention, local non-profits)
- Drug Prevention and Awareness (could include Drug Recognition Experts, School Resource Officer training, support groups, counseling, law enforcement and fire department programs)
- Other Options (could include Neighborhood improvement projects, roadway improvements and street beautification, transit improvements, small business support, affordable housing, and public art programs)

Neighborhood Impact Agreement

Neighborhood Impact Agreements are a subset of Community Benefits agreements (see Other Options, above). The difference is that they may focus on specific neighborhoods that may be negatively impacted by the presence of a commercial cannabis business nearby, or that may have been historically impacted by, for example, the location of liquor stores in the community. Neighborhood Impact Agreements may take the form of the following proposals that other cities have explored in the arena of Community Benefit proposals. Businesses have offered to:

- Repair a community center or sports parks
- Pay for light to be installed at a baseball/soccer park
- Pay for maintenance of open/green spaces.
- Pay for school books and other essential materials
- Support a center for at-risk children or single mothers
- Support job training programs
- Fund community services; youth centers, health clinics, child care centers, senior centers, job training programs
- Support neighborhood improvement projects
- Create scholarships for higher education opportunities

Operational Agreement

An Operational Agreement is a contract between the City and the Commercial Cannabis Operator. It will often lay out the terms under which the Commercial Cannabis Operator is allowed to operate in the City, specifically the terms that the City wishes to highlight and serve notice that they will be the grounds for enforcement priorities. Given the changing nature of the cannabis industry, operational

agreements will often explicitly reference the need to comply with local ordinances but will also reference changes in both state and federal law. They will include a listing of Community Benefits that the business operator has agreed to, as well as the rules regarding any local tax levied on the business. In this sense, Operational Agreements will reflect the City's regulatory priorities with respect to the Commercial Cannabis Business. It will cover items including the City's right of inspection of the business, annual reviews, and amendment or modification of the agreement.

All Community Benefit agreements will need a thorough legal analysis to ensure compliance with Proposition 218 before the City is able to enter into any agreement. Please note that many cities use these agreements as temporary measures until a cannabis tax can be put in place in the future.

Next Steps

At the October 2, 2018 City Council meeting, staff will seek direction from Council on path forward so as to have an ordinance in place prior to the expiration of the existing temporary moratorium on cannabis. One potential option would be to bring forward an ordinance to place a permanent ban on cannabis at this time, until additional analysis can be done on an ordinance allowing cannabis establishments in the City. An alternate path will be to bring forward an ordinance allowing cannabis establishments in the City, based on feedback from the Subcommittee and direction from Council.

The table below shows the timeline in order for a replacement ordinance to be adopted prior to the expiration of the cannabis moratorium ordinance

Day of Week	Date	Action
Friday	September 7, 2018	Cannabis Subcommittee meeting
Tuesday	October 2, 2018	Council discussion and direction on path forward
Friday	October 12, 2018	Last day to timely publish notice of permanent ordinance for Planning Commission consideration, assuming consideration at 10/24/18 meeting [10 day notice pursuant to Gov. Code 65090,65091]
Wednesday	October 24, 2018	Last day for Planning Commission to consider ordinance to replace moratorium
Friday	November 9, 2018	Last day to publish notice of ordinance for 11/20/2018 Council meeting
Tuesday	November 20, 2018	Last regular City Council meeting to introduce ordinance to replace moratorium
Tuesday	December 4, 2018	Last regular City Council meeting for permanent ordinance to be adopted and take effect prior to expiration of cannabis moratorium ordinance (effective date January 4, 2019)
Thursday	January 17, 2019	Cannabis moratorium ordinance expires

FISCAL IMPACT:

It is important to recover all costs so as not to create a financial burden on the City's General Fund and inadvertently subsidize the cannabis industry. If directed to move forward with cannabis establishments, staff will work with the consultant to develop a cost recovery fee to cover the costs of the application process, conditional use permit, and the annual ongoing costs. Additionally, the use of any benefit agreement or a future tax can also be explored.

CEQA:

Through July 1, 2019, SB 94 exempts from the California Environmental Quality Act ("CEQA") the adoption of an ordinance or regulation by a local jurisdiction if the ordinance or regulation requires discretionary review and approval of local permits or licenses for commercial cannabis activity.

For questions please contact Ashwini Kantak, Assistant City Manager at (408) 586-3053.

Attachments:

Attachment A – Community Survey Results

Attachment B – Cannabis Community Meetings Summary

Attachment C - Types and Number of Cannabis Establishments

ATTACHMENT A
Community Survey Results

	%	Count
1) Are you a Milpitas resident over the age of 18?		
Yes	99%	561
No	1%	8
2) Did you vote yes or no on Prop 64?		
Yes	56%	215
No	51%	195
Did not vote	26%	99
Decline to answer	16%	62
3) Do you currently use cannabis recreationally?		
Yes	17%	93
No	82%	440
Decline to answer	11%	6
4) Do you own or rent your residence?		
Own	80%	462
Rent	15%	89
Decline to answer	5%	28
5) Outdoor cannabis cultivation means cannabis grown outdoors for personal use in the backyard of a private residence. Do you support outdoor cultivation of cannabis at a private residence for personal use in Milpitas?		
Yes	38%	222
No	56%	326
Undecided/ no opinion	5%	29
6) If you agree with outdoor cultivation for personal use, how many outdoor plants should City allow in the backyard of a personal resident?		
Average		
Total	49%	296
Skipped	51%	304
7) A cannabis store sells cannabis to adults for recreational and/or medicinal use. Do you support allowing cannabis stores in Milpitas?		
Yes to both medicinal and recreational sales	35%	202
Yes to medicinal cannabis only	14%	79
No	48%	276
Undecided/ no opinion	3%	15
8) A cannabis delivery service is a business that delivers cannabis to adults for recreational and/or medicinal use. Do you support allowing cannabis delivery services in Milpitas?		

ATTACHMENT A
Community Survey Results

Yes	46%	266
No	50%	286
Undecided/ no opinion	4%	21
9) Commercial cannabis cultivation and manufacturing refers to businesses that sell cannabis to licensed commercial purchasers or use cannabis to make consumer products. Do you support allowing commercial cannabis cultivation and manufacturing in Milpitas?		
Yes	32%	181
No	64%	365
Undecided/ no opinion	5%	25
0) If retail and commercial cannabis activities are allowed in Milpitas, do you support a local tax on these activities to help fund general city operations?		
Yes	79%	433
No	17%	99
Undecided/ no opinion	4%	39
1) Do you have any other comments regarding cannabis regulation or taxation in Milpitas?		
Answered	36%	198
Skipped	64%	356



City of Milpitas
Cannabis Community Meetings Summary
Held June 6 at 6:00pm and
June 12 at 12:00pm

Community Meeting Objectives

- Provide the attendees with general information on Cannabis state legislation.
- Obtain community input on perspectives regarding potential cultivation and business regulations and a potential tax measure.
- Spread the word of the community survey and gather responses.

Participants: Community meetings were open to the public and had representatives from city staff at each meeting to answer any questions and to hear the feedback.

Facilitator: Nancy Hetrick from Management Partners facilitated the community meetings. Mandy Brown, also from Management Partners, accompanied her to publicly document the comments and ideas shared by the public. The notes were intended to capture perspectives and key themes and were not attributed to individuals or recorded verbatim.

Discussion Categories

The community meetings provided a broad overview of state law and regulation requirements promulgated by Proposition 64 and solicited community feedback on three key components of the Cannabis industry.

- Personal cultivation
- Cannabis businesses and regulations
- Taxation and revenue

Bike Rack

Facilitators used a tool called a “bike rack” to record questions from the public that required additional research or follow up. Two questions were placed on the bike rack to be answered by staff at another time or later in the process.

1. Can the City prohibit the transport of Cannabis within city limits?
2. Does the 600 foot buffer zone apply to personal outdoor cultivation *and* businesses?

Community Input by Topic

Personal Cultivation

The questions and comments from the public regarding personal cultivation are summarized into themes below.

Buffer zones

- Personal growth should be limited to the backyard
- Want to extend buffer zones – if properties allow outdoor grow, minimum fence height limits should be instated (e.g., 8 foot fence required)
- No growth in front yards
- When crafting the ordinance, consider the allowable number of plants as it relates to the buffer zones

Code Enforcement

- Concern around how indoor growth will be regulated – don't know how many plants are really grown inside
- Will code enforcement be reactive based on citizen complaints?
- City should add control measures to verify the six plant growth limit for indoor growing
- Outdoor growing in small quantities would be easier for enforcement
- City should dedicate more resources to police and code enforcement to address the impacts

Cannabis Businesses

The questions and comments from the public regarding cannabis businesses are summarized into themes below.

Business Types

- Allow at least one business type and be cautious of overregulation to not drive out new businesses
- If dispensaries (retail outlets) are allowed, all cannabis business types should be allowed to operate
- No marijuana festivals or events
- Oppose business and recreational uses; will ruin the family-friendly environment

Business Locations

- Should be in commercial districts – publicly accessible areas
- Enforce smoking distance limit from buildings (similar to tobacco use)
- Should be in commercial zones; don't permit home cannabis businesses
- Do not allow recreational use in public areas
- Require security (cameras, on-site security)

- San José has limited businesses to industrial areas which has caused safety issues; would like to see businesses in a commercial or retail area with more visibility and patrol
- Should cap the number of retail outlets
- Put these businesses in areas with high police/patrol traffic
- Should consider office areas

Code Enforcement

- Concerned with enforcement issues and compliance with federal law (banking) – would like to see stronger regulations, larger buffer zones, and public notice to surrounding properties of a cannabis business applying for a permit
- Explore worker-owned co-op requirement to promote compliance
- Follow alcohol sales model – potentially sell in liquor stores?
- Enforce child-proof packaging
- Ordinance should have a provision with the ability to revoke license to sell or distribute when violations have been committed

Taxation and Revenue

The questions and comments from the public regarding taxation and revenue are summarized into themes below.

Taxation Type

- Will tax be a general tax?
- Give the residents a choice
- Look at surrounding cities and their tax rates to understand the environment
- Consider a sunset measure or some way to change or modify the tax
- City should explore licensing fees as part of the program development to capture program costs

Revenue Use

- Cost to implement and run the program should be covered by the revenues generated through taxation and permits
- Revenues should be used to cover law enforcement and code enforcement demands
- Revenues should be used to provide public health education on the effects of cannabis, especially on minors

Next Steps

- Consolidate community survey responses
- Develop zoning and regulatory ordinance

Attachment C - Types and Number of Cannabis Establishments

CULTIVATION

Description:

Cannabis cultivation is generally divided into four basic categories: outdoor, indoor, mixed light (utilizing both natural and artificial light) and nursery. A combination of these cultivation techniques may occur at a site. Cultivation licenses allow for activities involving planting, growing, harvesting, drying, curing, grading and trimming. Depending on the cultivation method, the size, location, business strategy and setting of cannabis cultivation sites could vary.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the maximum recommended number of cultivation operations is two (2). This is a conservative estimate driven by the laws of supply and demand. Since the State of California has to date issued a sufficient number of cultivation licenses to meet two hundred fifty percent (250%) of California's demand for cannabis, there is strong reason to suspect that the market will be saturated with product, and that over the next one to two years, many cultivation operations will fail as supply exceeds demand, driving down prices and profits.

RETAIL

Description:

As defined by the Bureau of Cannabis control, a Cannabis Retailer is a person licensed to sell cannabis goods to customers as "a retailer, microbusiness, or nonprofit." The retail component of the supply chain is by design the most visible segment of the commercial cannabis industry. As such, retail sales locations have been subject to the most scrutiny. Retail sales locations should be thoughtfully zoned, designed, and constructed in a manner that is suitable for the neighborhood to create the least amount of impact on the surrounding businesses and neighborhood.

In addition to being highly visible to the public, the retailer is at the end of the cannabis supply chain and thus where the inventory is under the most stringent control. The final product has been tested, packaged, labeled and accounted for down to the gram. Also, retailers tend to employ the fewest number of staff members and have the highest rate of employee retention among the license types such as cultivation or manufacturing. Under robust security measures (comprehensive surveillance camera coverage, limited access areas, on-site security personnel, etc.) and keeping cannabis accessible to the fewest number of employees, there is generally very little theft from retail sale establishments. For example, in the six years that Colorado has been overseeing commercial cannabis activities, there have only been 8 reported violent crimes at retail sales locations.

Based on the current demand for retailer locations (dispensaries), retail locations can generate substantial revenues compared to other retail establishments within jurisdictions. For example,

cannabis retailers currently generate on average \$933 per square foot, which exceeds other retail stores such as Whole Foods (\$903), Walgreens (\$720), Wal-Mart (\$446), The Gap (\$334), Kohl's (\$228) and Dick's Sporting Goods (\$184). A reason for this is that most retail stores take up much more space than dispensaries, cannabis retailers stock a lot of product into a relatively small amount of space, and the average price point for marijuana is attractive to consumers.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the recommended number of retail operations is three (3), and possibly four if no microbusiness is allowed. This is based on two key factors. First, a retailer-to-population ratio reflecting the general rule that one cannabis retail outlet can serve 18,000 residents. Second, local and regional demand based on what policies neighboring jurisdictions have with regard to cannabis businesses. Local demand is relatively constant, unless a city is a tourist destination with spikes in overall retail activity at certain times of the year.

In regard to neighboring jurisdictions, the largest cities near Milpitas are Fremont to the north and San Jose to the south, both 11.2 miles away. San Jose allows commercial cannabis businesses to operate and is host to at least nine permitted retail outlets (it should be noted San Jose's population is over 1 million, compared to Milpitas' 77,500 as of 2016). Fremont bans all commercial cannabis operations, including deliveries. Fremont bans outdoor personal cultivation as well, with a registration requirement for indoor cultivation.

DISTRIBUTION

Description:

The Distribution model is a fundamental component of the cannabis supply chain. Under state law, distributors are the only licensed business type that can transport inventory between licensed cannabis businesses. In addition to transporting inventory between licenses, distribution companies will also be responsible for ensuring the examination of inventory at a testing laboratory and the collection of the State's Excise Taxes, before releasing the product to a retailer. Cultivators, manufacturers, and retailers also have the opportunity hold a distribution license as well, provided the distributor's licensed premises are "separate and distinct". This is to ensure that the various administrative privileges and inventory tracking requirements are strictly adhered to. Licensed Distributors will be required to establish comprehensive security measures to ensure the inventory is secured during transit and accounted for with manifest documentation. Distributors will be required to be licensed in a commercial or industrial building, requiring little to no signage or advertisement.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the recommended number of distribution operations is two (2). Unlike retail, distribution is not a licensed activity that is dependent on local demand. A distribution operation can serve a region, or multiple regions. A prudent estimate is that the city can sustain two such operations.

MANUFACTURING

Description:

The Department of Public Health (DPH) defines Manufacturing as “all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products”. Manufacturing also includes “any processing, preparing, holding, or storing of components and ingredients”. Manufacturing licenses are separated into two categories based upon the type of solvent used: Type 6 Manufacturing using non-volatile solvents, such as cold water, heat press, ethanol and CO₂; and Type 7 Manufacturing using volatile solvents such as butane and propane. Licensed cannabis manufacturing facilities are typically located in non-descript commercial buildings and require little to no signage or advertisement. As required by state law, manufacturers are expected to use professionally engineered, industrial hygienist-certified, closed-loop extraction equipment specifically designed to prevent any volatile solvents from being released into the atmosphere. When used by a trained extraction technician, the process is intended to be safe and environmentally responsible.

Infused products and edibles manufactured in these types of facilities are the fastest growing products in the cannabis industry. Currently, edible sales account for 47% of cannabis inventory sold, and that is expected to increase. For example, in Colorado, 63% of cannabis sales are derived from edible cannabis products.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the recommended number of manufacturing operations is two (2). Unlike retail, manufacturing is not a licensed activity that is dependent on local demand. A manufacturing operation can serve a region, or multiple regions, depending on its ability to contract with distributors who have such a scope of operations. A prudent estimate is that the city can sustain two such operations.

MICROBUSINESS

Description:

As defined by the Bureau of Cannabis Control, a microbusiness is a license type authorizing the cultivation of cannabis on an area less than 10,000 square feet, combined with the ability to act as a licensed distributor, Level 1 manufacturer, and retailer. The licensee must demonstrate compliance with all requirements imposed by this division on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities. In order to hold a microbusiness license, a licensee must engage in at least three (3) of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail sale.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the recommended number of microbusinesses is two, with the understanding that microbusinesses include as a component of their business model a retail

operation, and that allowing a microbusiness will affect the number of retail businesses the city should authorize. It is anticipated that if a microbusiness is authorized in Milpitas will have a non-storefront retail model that conducts deliveries and does not involve foot traffic of customers in and out of the business, otherwise it will be limited to cultivation, manufacturing and distribution only.

TESTING LABORATORIES

Description:

As defined by the Bureau of Cannabis Control, Cannabis Testing Laboratories will be required to perform testing on cannabis goods to measure: cannabinoids, foreign material, heavy metals, microbial impurities, mycotoxins, moisture content and water activity, residual pesticides, residual solvents and processing chemicals and terpenoids. Additionally, edible cannabis products that contain more than one serving per unit will be tested for homogeneity to endure consistent concentrations of tetrahydrocannabinol (THC) or cannabidiol (CBD). Upon completion of the test, the laboratory will generate a certificate of analysis that contains the results of the testing and whether the tested batch passed or failed.

Testing laboratories are required to develop and implement a quality assurance program that is sufficient to ensure the reliability and validity of the analytical data produced by the laboratory. Testing requirements will be phased in throughout 2018. Testing laboratories will be required to test cannabis goods for both A-licenses and M-Licenses. Owners of a testing laboratory are prohibited from conducting other commercial cannabis activities.

Testing labs pose the fewest public safety challenges because they have so little cannabis on the premises compared to other license types that they are far less likely to attract criminal activity, or to become a source of diversion. Testing lab operators are prohibited by law from operating or having an ownership interest in any other license category. However, because testing labs are critical to enforcing the state's health and safety standards, they must have both rigorous chain-of-custody protocols and testing equipment that can consistently comply with state standards.

For the City of Milpitas, taking into account the state-mandated buffer zone requirement triggered by sensitive uses, the recommended number of testing labs is two. There is a great demand for testing labs currently, as they are a key method by which the state enforces the health and safety requirements imposed on cannabis. However, as more labs spring up that demand will eventually plateau and then decline.

Cannabis Subcommittee Presentation

Cannabis Use Ordinance

September 10, 2018



Prior Cannabis Discussion



- Subcommittee was established in February 2017; met several times to review potential options for cannabis zoning, ordinances, and tax measures
- At April 24, 2018 Subcommittee meeting, staff was directed to conduct outreach on potential cannabis uses and a tax measure
- At May 1, 2018 Subcommittee meeting, staff presented the results of the community outreach
- At the August 7, 2018 Council meeting, staff was directed to not move forward on a cannabis tax measure but was asked to bring back options on allowing cannabis establishments, to the Cannabis Subcommittee and subsequently to City Council

Community Feedback



- Two community meetings held in June 2018. Feedback sought in three main areas
 - Personal Cultivation
 - Cannabis Businesses and Regulation
 - Taxation and Revenue
- Online and special event “in-person” survey participation garnered 569 responses on varying cannabis related questions and topics
 - Majority opposed outdoor cultivation (56%)
 - 49% supported allowing cannabis retail businesses, and 48% did not support allowing cannabis retail in Milpitas
 - Results were neutral or undecided on cultivation and manufacturing businesses (50%)
 - Majority supported a cannabis use tax in Milpitas (79%)

Key Topics for Subcommittee Discussion



- Buffer Zones
- Potential Types and Number of Cannabis Establishments
- Cost Recovery Fees Methodology and Application Process
- Community Benefit Agreements

Buffer Zones



- State Mandated Sensitive Uses
 - Schools
 - Commercial Day Care Centers
 - Youth Centers
- Size of Buffer Zones – 600 feet as mandated by the State, alternate distances of 400, 500, 800, 1,000 feet
- Buffers for Other Uses: Residential, Home Based Day Care

Youth Center Definition



Youth Center” means any public or private facility that is primarily used to host recreation or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or on city, county or state parks.

This definition shall not include any private martial arts, yoga, ballet, music, art or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor’s office primarily serving children or a location which is primarily utilized as an administrative office or facility serving youth organizations.

Buffer Zones



Staff evaluated the following buffer zones:

- Sensitive Use buffer zones of 400', 500', 600', 800', 1,000'
- Residential buffer zone of 150'
- Home based day care buffer zone of 600'

Buffer Type	Land Use Designations Available for Potential Cannabis Establishments
400' Sensitive Uses Buffer	Industrial, Commercial, Retail, Residential
600' Sensitive Uses Buffer	Industrial, Commercial, Retail, Residential
1,000' Sensitive Uses Buffer	Industrial, Commercial, Limited Residential
With 150' Residential Buffer	Industrial, Commercial, Retail
600' Home Day Care Buffer	Industrial, Commercial, Retail, Limited Residential

Key Considerations in determining potential locations:

Crime in Areas with Low Pedestrian/Vehicular Traffic, Quality of Life Impacts in Residential Areas, Odor Impacts, Proximity to Major Freeways attracting non Milpitas residents, Impact on Planned Economic Development and Growth in Mid Town

Potential Types and Number of Cannabis Establishments



If the City were to allow cannabis establishments, potential types and number of establishments, based on City size and industry standards, are outlined below:

- Cultivation (2)
- Distribution Center (2)
- Manufacturing (2)
- Microbusiness (2) (City could allow Microbusinesses to conduct non-storefront deliveries only due to how they are zoned or limit it to only cultivation, manufacturing and distribution with no retail)
- Retail – storefront and non-storefront (3, possibly 4 if no Microbusiness is allowed)
- Testing Lab (2)

* Please note Research and Development is not a permit type but is permitted as a function of a cultivation nursery under regulation state regulations.

Cost Recovery Fees Methodology and Application Process



All costs associated with allowing cannabis establishments will need to be recovered.

Fees could include:

- Zoning Evaluation Fee
 - Initial Application Fee
 - Conditional Use Permit Fee
 - Annual Cost Recovery Fee (for compliance and oversight)
-
- If City were to move forward on allowing cannabis establishments, staff recommends using a merit based application process to select the most qualified applicants

Community Benefit Agreements



- Community Benefit Use Agreement
- Neighborhood Impact Agreement
- Operations Agreement
- Several cities use these types of agreements for cannabis businesses
- All these options will require a thorough legal analysis to ensure compliance with Proposition 218 and the laws governing conditions and exactions on development; these agreements are typically used as temporary measures until a tax is put in place

Prohibition on Cannabis Businesses



- Urgency Ordinance No. 291 to place a moratorium on cannabis adopted on January 17, 2017
- Moratorium extended multiple times, will expire on January 17, 2019; cannot be further extended
- A zoning ordinance must be adopted prior to expiration of moratorium

Timeline for Replacement Cannabis Ordinance



Day of Week	Date	Action
Friday	September 10, 2018	Cannabis Subcommittee Meeting
Tuesday	October 2, 2018	City Council meeting to get direction on which ordinance to move forward to replace moratorium ordinance
Friday	October 12, 2018	Last day to timely publish notice of cannabis ordinance for Planning Commission consideration, assuming consideration at 10/24/18 meeting
Wednesday	October 24, 2018	Last day for Planning Commission to consider cannabis ordinance and make recommendations to City Council
Friday	November 9, 2018	Last day to publish notice of ordinance for 11/20/18 City Council consideration
Tuesday	November 20, 2018	Last regular City Council meeting to introduce cannabis ordinance
Tuesday	December 4, 2018	Last regular City Council meeting for cannabis ordinance to be adopted and take effect prior to expiration of cannabis moratorium ordinance (effective date January 4, 2019)
Thursday	January 17, 2019	Cannabis moratorium ordinance expires

Next Steps



- Incorporate feedback from Subcommittee into staff recommendations to City Council
- Seek direction at the October 2, 2018 City Council meeting on which cannabis ordinance to bring to Planning Commission and City Council for adoption, prior to the expiration of the current moratorium ordinance

Recommendation



- 1) Receive staff report, and
- 2) Provide direction to staff on recommendations for the full Council's consideration at the October 2, 2018 City Council meeting.